NIK ADLI NIK ABDUL AZIZ & ORS

v.

KETUA POLIS NEGARA & ORS

HIGH COURT MALAYA, DARUL EHSAN
KN SEGARA J
[CRIMINAL APPLICATION NO: 44-41-04]
1 SEPTEMBER 2004

PREVENTIVE DETENTION: *Detention - Application for habeas corpus - Extension order - Extension of detention - Whether Minister breached procedural requirements in making extension order - Internal Security Act 1960, s. 8(7)*

CONSTITUTIONAL LAW: *Fundamental liberties - Habeas corpus - Extension order - Extension of detention - Whether Minister breached procedural requirements in making extension order - Internal Security Act 1960, s. 8(7)*

ADMINISTRATIVE LAW: *Remedies - Habeas corpus, application for - Extension order - Extension of detention - Whether Minister breached procedural requirements in making extension order - Internal Security Act 1960, s. 8(7)*

The applicants were detained under s. 8(1) of the Internal Security Act 1960 ('the Act') for a period of two years with effect from 24 September 2001 pursuant to a detention order dated 13 September 2001 ('the original order'). On 22 September 2003, the original order was extended for another two years under s. 8(7) of the Act with effect from 24 September 2003 ('the extension order'). The applicants applied for *habeas corpus*, submitting that the allegations of fact on which the extension order was based was neither served nor created, thus depriving the applicants of their rights under s. 11 of the Act. The issue requiring consideration was whether there had been any procedural non-compliance with any requirement in the Act by the Minister in making the extension order.

Held (dismissing the application):

[1] Upon perusal of the affidavit evidence, there had been no breach of any procedural requirement by the Minister when he made the extension order, and therefore, there could be no judicial review on the said extension order. The applicants' submission that the statement

in writing of the allegations of fact was not served with the extension order was without merit, as the extension order was made on the same grounds as those on which the original order was made and, consequently, the furnishing of the allegations of fact (again) did not arise. The furnishing of the allegations of fact only arises when the detention has been extended on wholly different grounds, or partly on different grounds, to that of the original order. Thus, any allegation that the Minister had either not applied his mind fairly and had taken irrelevant matters into consideration or had acted in a mechanical fashion in making the extension order, was baseless and without merits. (pp 331 e & 333 f-h)

Legislation referred to:
Federal Constitution, art. 151
Internal Security Act 1960, ss. 8(1), (7), 8B(1), 11(2)(b), 12, 16

For the applicants - Edmund Bon (Edward Saw, Amer Hamzah Arshad & Muhammad Faiz Fadzil); M/s Chooi & Co
For the respondents - Mohamad Hanafiah Zakaria SFC (Abdul Wahab Mohamad, Raja Rozela Raja Toran & Sharlyza Alis Sharkawi)

Reported by Suresh Nathan

JUDGMENT

KN Segara J:
There are 13 applicants in this application for *habeas corpus* before me. All of them had been detained under the Internal Security Act 1960. However, 8 of them withdrew their application on 28/8/04 and the hearing proceeded only in respect of applicants No. 1, 2, 5, 7 and 8. At the out set of the hearing, counsel for the said 5 applicants stated that the facts in respect of the said 5 applicants' detention were similar and he would, therefore, be relying on the affidavit of applicant No. 1 (1st applicant).

It is common knowledge that 1st applicant, Nik Adli bin Nik Abdul Aziz, is the son of the current Menteri Besar of Kelantan. I take this opportunity to commend counsel for not making any insinuation that the detention of the 1st applicant and the 4 others has been politically motivated. The challenge before me by the applicants is on the legality of the extension order made by the Minister, dated 22 September 2003, for a period of two years, with effect from 24 September 2003.

The 1st applicant and the 4 others were detained under s. 8(1) of the Internal Security Act 1960 (the "Act") for a period of two years with effect from 24 September 2001 pursuant to a detention order (original order) dated 23 September 2001, with a view to preventing the said applicants from acting in any manner prejudicial to the security of Malaysia. On 22 September 2003, the said applicants' original order was extended for another two years under s. 8(7) of the Act, with effect from 24 September 2003 ("extension order").

Section 8B(1) of the Act clearly prohibits any judicial review in any court or the exercise of any jurisdiction in respect of any act done or decision made by the Yang di-Pertuan Agong or the Minister, in the exercise of their discretionary power in accordance with the Act, save in regard to any question on compliance with any procedural requirement in the Act, governing such act or decision.

The making of the extension order under s. 8(7) of the Act by the Minister (the 2nd respondent herein) is clearly a discretionary act and decision on his part, within the ambit of the Act. However, in making that extension order, has there been any procedural non-compliance with any requirement in the Act? Upon the affidavit evidence before me, I am entirely satisfied that there has been no breach of any procedural requirement by the Minister when he made the said extension order and, therefore, there can be no judicial review on the said extension order. The application before me must accordingly be dismissed.

The complaint by the counsel for the applicants is that there has been non-compliance with art. 151(1) of the Federal Constitution in the making of the said extension order and the service of it on the applicants. Article 151 of the Federal Constitution must be read together with the Act. All the requirements of art. 151 of the Federal Constitution have been incorporated in ss. 11, 12 and 16 of the Act. The said provisions are consistent and harmonious with art. 151 of the Federal Constitution. Now, has there been any breach of ss. 11, 12 and 16 of the Act by the Minister when making the impugned extension order herein? Based on the affidavit evidence before me, the answer must certainly be in the negative.

The learned counsel for the applicants submitted that the allegations of fact on which the extension order is based was neither served nor created, thus depriving the applicants of their rights under s. 11 of the Act. There is a serious fallacy in this argument.

The applicants do not dispute that the allegations of fact on which the original order was based has been served on them and there is no dispute that the applicants have been availed all their statutory rights under s. 11 of the Act, with respect to the original order, and that the process under s. 12 of the Act duly observed and carried out, thereafter. In the circumstances, there is a total failure on the part of counsel for the applicants to appreciate the provisions of s. 8(7) of the Act pursuant to which the extension order has been made by the Minister. Section 8(7) of the Act reads:

> The Minister may direct that the duration of any detention order or restriction order be extended for such period, not exceeding two years, as he may specify, and thereafter for such further periods, not exceeding two years at a time, as he may specify, either:
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> (a) on the same grounds on which the order was originally made;
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> (b) on grounds different from those on which the order was originally made; or
>
> (c) partly on the same grounds and partly on different grounds.
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> Provided that if a detention order is extended on different grounds or partly on different grounds the person to whom it relates shall have the same rights under section 11 as if the order extended as aforesaid was a fresh order, and section 12(1) shall apply accordingly.

It is patently clear from the affidavit of the Minister (encl. 10, paras. 5 and 6) that the duration of the original order was extended on the same grounds as those on which the original order was made. No affidavit has been filed by the applicants to contradict this. Paragraphs 5 and 6 of encl. 10 reads as follows:

> 5. Selanjutnya, saya menyatakan bahawa pada 22.9.2003, berdasarkan penelitian saya kepada lapuran-laporan dan maklumat berhubung dengan kegiatan-kegiatan dan sikap serta tingkahlaku Pemohon Pertama, saya berpuashati bahawa aktiviti-aktiviti yang telah dijalankan oleh Pemohon Pertama masih lagi boleh membahayakan dan menjejaskan keselamatan Negara Malaysia. Dengan itu, saya telah menggunakan minda saya dan

memutuskan bahawa penahanan lanjutan terhadap Pemohon Pertama atas alasan yang sama adalah perlu bagi mencegah beliau daripada bertindak dengan apa cara sekalipun yang boleh memudaratkan keselamatan Malaysia. Maka dengan itu, saya telah berpuashati bahawa adalah perlu tempoh Perintah Tahanan bertarikh 23.9.2001 yang dibuat dibawah seksyen 8(1) Akta tersebut terhadap Pemohon Pertama, dilanjutkan atas alasan yang sama dengan alasan diatasnya Perintah Tahanan bertarikh 23.9.2001 itu dibuat. Saya tidak dapat mengemukakan laporan-laporan dan maklumat tersebut kerana berpendapat dengan berbuat demikian, ia adalah bertentangan dengan kepentingan Negara sepertimana yang diperuntukkan dibawah seksyen 16 Akta tersebut dan Perkara 151 (3) Perlembagaan Persekutuan.

5. Maka, pada 22.9.2003, saya telah memerintahkan supaya Pemohon Pertama ditahan selama 2 tahun selanjutnya mulai dari 24 September 2003, di Tempat Tahanan Perlindungan, Taiping. Satu Salinan Perlanjutan Perintah Tahanan dibawah seksyen 8(7)(a) Akta tersebut yang telah disahkan oleh Deputi Superintenden Polis Yusoff bin Mohd Amin, DSP E6B1, Ibu Pejabat Polis, Cawangan Khas, Bukit Aman yang mempunyai di dalam jagaannya dokumen tersebut adalah dilampirkan dan ditandakan sebagai 'AA-2'.

The proviso to s. 8(7) unequivocally specifies that those whose detentions have been extended on different grounds or partly on different grounds are entitled to exercise the same rights under s. 11 as if the extended orders are original orders. In other words, they are entitled to make representations against the extension orders to the Advisory Board. Such entitlement would invoke the application of s. 11(2)(b) which, *inter alia*, requires the detainee to be furnished by the Minister with a statement in writing of, (i) grounds on which the order is made and (ii) of the allegations of fact on which the order is based. Therefore, the submission by the learned counsel for the applicants that the statement in writing of the allegations of fact was not served with the extension order is without merit, as the extension order was made on the same grounds as those on which the order was originally made and, consequently, the furnishing of the allegations of fact (again) does not arise. The furnishing of the allegations of fact only arises when the detention has been extended on wholly different grounds or, partly on different grounds, to that of the original order.

In the light of the affidavit evidence before me, any allegation that the Minister had either not applied his mind fairly and had taken irrelevant matters into consideration, or has acted in a mechanical fashion, in making the extension order, is baseless and without merits.

The application for *habeas corpus* by the 1st, 2nd, 5th, 7th and 8th applicants herein is dismissed and the application of all the other applicants is struck off.